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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/659,379	09/08/2000	Aaron I. Vinik	05126.00003	4987
7590	05/26/2004		EXAMINER	
Banner & Witcoff Ltd Eleventh Floor 1001 G Street NW Washington, DC 20001-4597			ART UNIT	PAPER NUMBER

DATE MAILED: 05/26/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Notification of Non-Compliance With 37 CFR 1.192(c)	Application No.	Applicant(s)
	09/659,379	VINIK ET AL.

Examiner	Art Unit	
Hope A. Robinson	1653	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

The Appeal Brief filed on 22 March 2004 is defective for failure to comply with one or more provisions of 37 CFR 1.192(c). See MPEP § 1206.

To avoid dismissal of the appeal, applicant must file IN TRIPPLICATE a complete new brief in compliance with 37 CFR 1.192(c) within the longest of any of the following three TIME PERIODS: (1) ONE MONTH or THIRTY DAYS from the mailing date of this Notification, whichever is longer; (2) TWO MONTHS from the date of the notice of appeal; or (3) within the period for reply to the action from which this appeal was taken. EXTENSIONS OF THESE TIME PERIODS MAY BE GRANTED UNDER 37 CFR 1.136.

1. The brief does not contain the items required under 37 CFR 1.192(c), or the items are not under the proper heading or in the proper order.
2. The brief does not contain a statement of the status of all claims, pending or cancelled, or does not identify the appealed claims (37 CFR 1.192(c)(3)).
3. At least one amendment has been filed subsequent to the final rejection, and the brief does not contain a statement of the status of each such amendment (37 CFR 1.192(c)(4)).
4. The brief does not contain a concise explanation of the claimed invention, referring to the specification by page and line number and to the drawing, if any, by reference characters (37 CFR 1.192(c)(5)).
5. The brief does not contain a concise statement of the issues presented for review (37 CFR 1.192(c)(6)).
6. A single ground of rejection has been applied to two or more claims in this application, and
 - (a) the brief omits the statement required by 37 CFR 1.192(c)(7) that one or more claims do not stand or fall together, yet presents arguments in support thereof in the argument section of the brief.
 - (b) the brief includes the statement required by 37 CFR 1.192(c)(7) that one or more claims do not stand or fall together, yet does not present arguments in support thereof in the argument section of the brief.
7. The brief does not present an argument under a separate heading for each issue on appeal (37 CFR 1.192(c)(8)).
8. The brief does not contain a correct copy of the appealed claims as an appendix thereto (37 CFR 1.192(c)(9)).
9. Other (including any explanation in support of the above items):

See the attached sheets.

The Appeal brief heading of "Related Appeals and Interferences" does not comply with 37 CFR 1.192 because MPEP Chapter 1200, Section 1206 states that " a statement identifying by number and filing date all other appeals or interferences known to appellant, the appellant's legal representative, or assignee which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal" should be disclosed in this section.

The Appeal brief heading of "Status of the claims" does not comply with 37 CFR 1.192 because the appellant did not provide the status of the claims. According to the MPEP, Chapter 1200, Section 1206, a statement of the status of all the claims, pending or cancelled, and identifying the claims appealed is needed. This section should state, for example, "Claims 1-49 were originally filed in the present application. During prosecution, claims 1,7, 8, 10, 13-18, 23, 27, 29, 38, 45, 46, 48 and 49 were amended. Accordingly, claims 1-49 are pending and are the subject of the present appeal and stand appealed. A copy of the appealed claims is attached as Appendix (1)".

The Appeal brief heading of "Issue" does not comply with 37 CFR 1.192 because the appellant does not provide a clear/concise statement of the issue. According to MPEP, Chapter 1200, Section 1206, a concise statement of the issues presented for review is necessary. This section should state, for example, The issue for the Board's consideration is :

Whether claims 1-49 are properly rejected under 35 U.S.C.103 Non-Statutory Double Patenting.

The Appeal brief heading of "Grouping of the Claims" does not comply with 37 CFR 1.192 because the appellant did not describe why the claims are separately patentable. According to MPEP Chapter 1200, section 1206, "for each ground of rejection which appellant contests and which applies to a group of two or more claims, the Board shall select a single claim from the group and shall decide the appeal as to the ground of rejection on the basis of that claim alone unless a statement is included that the claims of the group do not stand or fall together and, in the argument under paragraph (c)(8) of this section, appellant explains why the claims of the group are believed to be separately patentable. Merely pointing out differences in what the claims cover is not an argument as to why the claims are separately patentable. Thus, the information provided under this heading in the instant application is insufficient.

Note that the Table of Contents does not list the Appendices and where they are found, for example, (Appendix I.....(i)). In addition, the Table of Contents provides the contentions of appellant with respect to the arguments on the issue presented for review. It is noted that Appendix I provides a copy of the claims, however, the claims are not in proper amendment format, see for example, claim 14 and claims stated as amended without any indication of how amended (see for example claim 21). In addition, appellant filed an amendment on March 22, 2004 concurrently with the Appeal Brief which amends claims 16-18, 21, 23, 27, 29 and 45, however, these claims are also not in proper amendment form, see for example claim 27. It is also noted that Appendix II provides a copy of the claims in the copending application (09/717,905), however, the claims are not in proper amendment format see for example claim 24.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hope A. Robinson whose telephone number is 571-272-0957. The examiner can normally be reached on Monday-Friday from 9:00 a.m. to 6:30 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christopher S.F. Low can be reached on 571-272-0951. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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